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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1929

No. 344

CHARLES A. CORLISS, PETITIONER,

vs.

FRANK K. BOWERS, AS COLLECTOR OF INTERNAL REVENUE FOR THE SECOND DISTRICT OF NEW YORK

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 27, 1929

CERTIORARI GRANTED OCTOBER 21, 1929

(34,475)

(34,475)

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[fol. 1]

IN UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT

L-39—354

CHARLES A. CORLISS, Plaintiff-Appellant,

against

FRANK K. BOWERS, as Collector of Internal Revenue for the Second District of New York, Defendant-Appellee

PRELIMINARY STATEMENT

This is an appeal taken by Charles A. Corliss, the plaintiff below, from a final judgment dismissing the complaint herein upon a motion made upon the pleadings by the defendant.

Plaintiff is represented by White & Case, of New York City. The defendant is represented by Charles H. Tuttle, Esq., United States Attorney.

The motion to dismiss was served on July 20, 1928. The motion was argued before Judge Mack on July 20, 1928 and an opinion was handed down on January 10, 1929, granting the motion.

The order granting the motion was entered on January 16, 1929 and the judgment appealed from was entered on January 21, 1929. The appeal was taken on February 6, 1929.

[fol. 2] IN UNITED STATES DISTRICT COURT, SOUTHERN NEW YORK

L 39/354

CHARLES A. CORLISS, Plaintiff,

against

FRANK K. BOWERS, as Collector of Internal Revenue for the Second District of New York, Defendant

ORDER APPEALED FROM

The defendant having moved to dismiss the complaint herein upon the ground that said complaint fails to state facts sufficient to constitute a cause of action, and said motion having duly come on to be heard before me,

Now, after hearing Samuel C. Coleman, Assistant United States Attorney, in support of the motion and Joseph M. Hartfield, of counsel for the plaintiff, in opposition thereto, and due deliberation having been had, and the Court having filed its opinion directing the dismissal of the complaint,

Now, upon motion of Charles H. Tuttle, United States Attorney, attorney for the defendant, it is

Ordered that said motion be and it hereby is granted, and the plaintiff having stated that it does not desire to serve an amendment to the complaint, that the complaint be [fol. 3] and it is hereby dismissed with costs and that the defendant have judgment accordingly.

Enter.

J. W. Mack, Circuit Judge.

IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

CHARLES A. CORLISS, Plaintiff,

against

FRANK K. BOWERS, as Collector of Internal Revenue for the Second District of New York, Defendant

JUDGMENT

The defendant having moved for an order dismissing the complaint herein upon the ground that said complaint fails to state facts sufficient to constitute a cause of action and said motion by order of January 16, 1929 having been duly granted with directions accordingly,

Now, on motion of Charles H. Tuttle, United States Attorney, attorney for defendant, it is

Ordered, adjudged and decreed that the complaint herein be and it hereby is dismissed and that the defendant have

judgment against the plaintiff in the sum of $20.00, his costs as taxed.

Alex. Gilchrist, Jr., Clerk.

[fol. 4] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION TO DISMISS

Now comes the defendant and moves to dismiss the complaint herein upon the ground that said complaint fails to state the facts sufficient to constitute a cause of action.

Charles H. Tuttle, United States Attorney, Attorney for Defendant.

Dated New York, July 16, 1928.

[fol. 5] Summons, in usual form, omitted in printing.

[fol. 6] IN UNITED STATES DISTRICT COURT

COMPLAINT

The plaintiff, for his complaint herein, by White & Case, his attorneys, alleges:

1. That at all the times hereinafter mentioned the plaintiff was and now is a citizen of the United States of America, residing and having his principal place of business in the Second Internal Revenue District of the State of New York, in the Southern District of New York.

2. That at all the times hereinafter mentioned the defendant was and now is the Collector of United States Internal Revenue for the Second District of the State of New York.

3. That on or about December 29, 1922, the plaintiff, in the County and State of New York, assigned, transferred and delivered certain corporate stocks and bonds to Bank-

ers Trust Company, of the City of New York, as Trustee, under a trust indenture pursuant to which said Bankers Trust Company, as Trustee, was directed to pay the income therefrom currently in quarterly instalments to Anne Parrish Corliss, the wife of the plaintiff, for and during the term of her life and on her death to deliver the principal of the trust fund to certain persons other than the plaintiff. A copy of said trust indenture marked "Exhibit A," is attached hereto and made a part hereof. Said indenture at all the times herein mentioned constituted a bona fide, valid [fol. 7] trust under the laws of the State of New York.

4. During the year 1924, Bankers Trust Company, as Trustee of the trust referred to in the preceding paragraph, received the following gross income from the securities then constituting the principal of said trust:

Dividends on stock of domestic corporation	$123,521.25
Interest on 4 1/4% Liberty Loan Bonds, principal amount $57,000	2,415.15
Interest on obligations of States and political subdivisions thereof	1,725.31
Total	$127,661.71

and as such Trustee, sustained a loss on the sale of certain securities in said trust fund amounting to $302.

5. During the year 1924, Bankers Trust Company, as Trustee, disbursed the income of said trust referred to in the preceding paragraph as follows:

To Bankers Trust Company, as commissions for services rendered as Trustee	$3,190.82
For taxes	144.92
To Anne Parrish Corliss, as beneficiary of said trust	$124,325.97

6. On or about March 15, 1925, Bankers Trust Company, as Trustee of the trust referred to in the foregoing para- [fol. 8] graphs, filed with the defendant, Frank K. Bowers, as Collector, as aforesaid, a fiduciary return of income for said trust for the year 1924, in the form prescribed by the Regulation of the Treasury Department. A copy of said

fiduciary return of income, marked "Exhibit B," is attached hereto and made a part hereof.

7. None of the income referred to in paragraphs 4 and 5 above was paid or credited to, or received by the plaintiff during the year 1924 or any other year.

8. On or about the 15th day of March, 1925, the plaintiff duly filed with the defendant, Frank K. Bowers, as Collector, as aforesaid, a return for the purpose of determination and assessment of the income tax due from said plaintiff for the calendar year 1924, under and pursuant to the provisions of the Act of Congress approved June 2, 1924, known as the Revenue Act of 1924, and thereafter and on or about the 15th day of March, 1925, on or about the 15th day of June, 1925, on or about the 15th day of September, 1925, and on or about the 15th day of December, 1925, in quarterly instalments paid to the said Collector the sum of $31,945.30, being the amount of the income tax shown due in the said income tax return, and the amount of tax claimed by the plaintiff to be due and payable to the said Collector of Internal Revenue. A copy of the aforesaid income tax return, marked "Exhibit C," is attached hereto and made a part hereof.

9. The tax shown to be due in the return referred to in the preceding paragraph was computed without including [fol. 9] in taxable net income the amount of the income of said trust referred to in paragraphs 4 and 5 above. However, pursuant to Section 219 (g) of the Act of Congress approved June 2, 1924, and known as the Revenue Act of 1924, and the Regulations of the Treasury Department pertaining thereto, the amount of this income was reported in a rider attached to the return, which rider read as follows:

"This taxpayer is the grantor of a trust which, during all of 1924, was revocable. The income of such trust was payable to a beneficiary other than this taxpayer. The income of the trust in 1924 was as follows:

Dividends on stock of domestic corporations	$123,521.25
Other income	3,335.74
Loss on sale of securities by Trustee	302.00
Interest on 4 1/4% Liberty Loan Bonds, principal amount $57,000	2,415.15
Exempt interest on municipal and state bonds	1,725.31

The above income is reported herewith, pursuant to Section 219 (g) of the Revenue Act of 1924 and the Regulations of the Treasury Department. The tax payable on this return has been computed, however by this taxpayer without regard to such income, for the reason that this taxpayer believes and contends that the said provisions of the Revenue Act of 1924 and the Treasury Regulations taxing such income to this taxpayer are unconstitutional and void."

[fol. 10] 10. Thereafter, and on or about December 9, 1926 the Commissioner of Internal Revenue duly notified the plaintiff of the determination of a deficiency in income tax for the year 1924 in the amount of $44,910.88, and on or about February 11, 1927, notified the plaintiff that said deficiency had been recomputed and that the correct amount thereof was $44,687.43. Such deficiency resulted solely from including in the net income of the plaintiff for the year 1924, as the basis for computing the tax under Section 219 (g) of the Revenue Act of 1924, the income of the said trust as stated in paragraphs 4 and 5 hereof. A copy of said notice of deficiency, marked "Exhibit D," and a copy of said notice of the re-computation of said deficiency, marked "Exhibit DD," are attached hereto and made a part hereof. The plaintiff has filed no appeal with the Board of Tax Appeals from the determination of such deficiency, and more than sixty days have elapsed since the date upon which said notice of deficiency was mailed to the plaintiff.

11. Thereafter, the defendant, as Collector of United States Internal Revenue for the Second District of New York, demanded of plaintiff the sum of $44,687.43, together with interest in the amount of $4,115.83 as an additional income tax for the calendar year 1924, the said amount representing the deficiency in income tax determined by the Commissioner of Internal Revenue, as stated in the preceding paragraph.

12. Thereafter, and on March 11, 1927, in the forenoon, plaintiff, under duress, paid to defendant the amount of the additional tax and interest referred to in the preceding paragraph, less a credit of $464.94 representing an over-assessment for the year 1923, or a net amount [fol. 11] of $48,338.32.

13. Thereafter, and on March 11, 1927, in the afternoon, plaintiff duly appealed to the Commissioner of Internal Revenue by filing with the defendant a claim, a copy of which is attached hereto and marked "Exhibit E," for the refund of the net amount of the tax and interest paid as stated in the preceding paragraph, upon the ground that the provisions of the Revenue Act of 1924, and the Treasury Regulations pertaining thereto, which purport to tax plaintiff upon the income of the trust referred to in paragraph 3 above, are unconstitutional and void. Said claim for refund was thereafter and on or about the 23rd day of March, 1927, wholly rejected and denied by the Commissioner of Internal Revenue, as will appear from the communication received from the said Commissioner, a copy of which, marked "Exhibit F," is attached hereto and made a part hereof.

14. Plaintiff has at no time exercised in any manner any of the powers reserved in paragraph "Seventh" of the trust indenture referred to in paragraph 3 hereof.

15. Plaintiff alleges and claims that as said power of revocation was not exercised by plaintiff during the year 1924 or at any time prior thereto no tax upon the income of said trust for that year, as set forth in paragraphs 4 and 5 above, was due from plaintiff to the United States Government or to the defendant as Collector of United States Internal Revenue for the Second District of New York, and the sum of $48,338.32, being the amount of the [fol. 12] tax paid thereon, was illegally and without warrant or authority at law demanded and collected by the defendant from the plaintiff.

16 Plaintiff alleges and claims that the Act of Congress under which said sum of $48,338.32 was assessed against plaintiff and its payment compelled, to wit,—the Act of Congress approved June 2, 1924, and known as the "Revenue Act of 1924," is unconstitutional and void in so far as the same may be asserted to confer power to make said assessment against plaintiff and compel the payment thereof, for the reason that it violates the provisions of Article I, Section 2, Clause 3, of the Constitution of the United States to the effect that "direct taxes shall be apportioned among the several states," and the provisions of Article I, Sec-

tion 9, Clause 4 thereof, to the effect that "no capitation or other direct tax shall be laid unless in proportion to the census or enumeration hereinbefore directed to be taken," and the provisions of the fifth amendment to said Constitution, to the effect that no person shall be deprived of "property, without due process of law; nor shall private property be taken for public use, without just compensation." Plaintiff further alleges and claims that said Act as applied to plaintiff as aforesaid did not impose a tax on income, within the meaning of the provisions of the sixteenth amendment to the said Constitution, to the effect that "Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration"; and this plaintiff hereby draws in question the constitutionality of the said Act of [fol. 13] Congress and all provisions thereof assumed or asserted to authorize the assessment against and the collection from this plaintiff of said tax.

16. That no part of the said sum of $48,338.32 has been repaid to plaintiff and the whole amount thereof with interest thereon from the 11th day of March, 1927, remains due and owing from the defendant to this plaintiff, no assignment of this claim having been made.

17. This is a suit of a civil nature at common law, which arises under the Constitution and laws of the United States providing for internal revenue.

Wherefore plaintiff demands judgment against the defendant for the sum of Forty-eight Thousand Three Hundred Thirty-eight and 32/100 Dollars ($48,338.32) with interest thereon from the 11th day of March, 1927, together with the costs and disbursements of this action.

White & Case, Attorneys for Plaintiff. Office and Post Office address: 14 Wall Street, Borough of Manhattan, City of New York.

[fol. 14] *Duly sworn to by Joseph M. Hartfield. Jurat omitted in printing.*

[fol. 15] "EXHIBIT A" TO COMPLAINT

This indenture made the 29th day of December, 1922, between Charles A. Corliss, residing at Englewood, Bergen

County, New Jersey, party of the first part, and Bankers Trust Company, a corporation organized under the Banking Law of the State of New York, having its principle offices in the Borough of Manhattan, City and State of New York, hereinfater sometimes called the "Trustee," party of the second part.

Whereas, the party of the first part hereto desires to create a trust of the property and for the purposes hereinafter mentioned.

Now, therefore, this indenture witnesseth that in consideration of the premises, the mutual covenants herein contained, and of other good and valuable considerations, and of the sum of One Dollar ($1.00) to him in hand paid by the party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, the party of the first part has granted, conveyed, assigned, set over and delivered, and by these presents does grant, convey, assign, set over and deliver unto said party of the second part, its successors and assigns, the property and securities described in Schedule "A" hereto annexed and made a part hereof.

Together with the appurtenances, and all the estate and rights of the party of the first part thereto.

To have and to hold all and singular the property and securities described in Schedule "A" hereto annexed, unto [fol. 16] said party of the second part, its successors and assigns, in trust, nevertheless, for and upon the following uses and purposes, and subject to the terms, conditions, powers and agreements hereinafter set forth.

First. To receive, hold, manage, sell, invest and reinvest the same and every part thereof, in the manner hereinafter specified, and to collect, recover and receive the rents, issues, interest, income and profits thereof, hereinafter called "Income," and after deducting the commissions of the Trustees as hereinafter provided, and the proper and necessary expenses in connection with the administration of the trust, to pay the same in quarterly instalments of equal amount, or as nearly equal as possible, unto Anne Parrish Corliss, wife of the party of the first part, for and during the term of her life.

Upon the death of said Anne Parrish Corliss, to convey, transfer and pay over the principal of the trust fund, in

equal shares, to the children of the party of the first part then living, and to the issue of any deceased children, the issue of any deceased children taking per stirpes and not per capita; with this proviso, however, that if any child or grandchild entitled to share in the remainder, as herein provided, shall not have attained his or her majority at the time of the death of Anne Parrish Corliss, wife of the party of the first part, then the share of the principal of the trust which otherwise would have been paid over to such beneficiary shall be continued in trust by the Trustee until the majority of the beneficiary, the income in the meantime being applied for the maintenance, education and support of the beneficiary, if necessary, and upon the benefi- [fol. 17] ciary attaining majority, to convey, transfer and pay over to him or her, as the case may be, the share of principal to which such beneficiary is entitled.

In the event that no children of the party of the first part, or issue of deceased children shall be living at the time of the death of Anne Parrish Corliss, wife of the party of the first part, then to convey, transfer and pay over the principal of this trust fund to such person, persons or corporations, and in such manner and proportions as said Anne Parrish Corliss shall in and by her duly executed and probated last will and testament designate and appoint.

Second. The Trustee is directed to retain, subject to the provisions hereof, any and all of the property and securities described in Schedule "A" hereto annexed in their present form, without liability for decrease in the value of such property or securities. During the life of the party of the first part no sales of property which may at any time comprise the trust fund, and no change in the investments of the trust fund, shall be made by the Trustee except on written directions from the party of the first part. The Trustee shall be fully protected in respect of any sales, investments and reinvestments as shall be directed by said party of the first part, and shall not be liable or responsible in any way for depreciation or loss incurred by reason of any such sales, investments or reinvestments.

In the event that the Trustee shall request from the party of the first part written instructions as to investments, and the party of the first part shall neglect or refuse to furnish such instructions for a period of thirty days, or in the [fol. 18] event that the party of the first part shall be un-

able for any reason to furnish such instructions, or in the further event that the party of the first part shall not then be living, the Trustee is hereby authorized and empowered to invest and reinvest the proceeds in such securities as it may deem suitable for the trust, and shall not be restricted to securities of the character authorized by the laws of the State of New York or the State of New Jersey for trust investments.

Subject to the above restrictions, the Trustee shall have full power to sell, lease, mortgage or exchange any real estate forming part of the trust fund, at such times and upon such terms and conditions as it may deem proper, and to make, execute and deliver good and sufficient deeds, leases, mortgages or other instruments affecting the same.

No purchaser upon any sale by the Trustee shall be bound to see to the application of the purchase money arising therefrom, or to inquire into the validity, expediency or propriety of any such sale.

Third. In any case in which the Trustee is required, pursuant to the provisions of this indenture, to divide the principal of the trust estate into parts or shares, or to distribute the same, it is authorized and empowered in its sole discretion to make such division or distribution in kind, or partly in kind and partly in money, and for the purpose of such allotment the judgment of the Trustee concerning the propriety thereof, and the relative value for the purpose of division or distribution of the property and securities so allotted, shall be binding and conclusive on all persons and corporations interested therein.

Fourth. The Trustee may in its sole discretion cause the securities which may from time to time, comprise the trust [fol. 19] fund, or any part thereof, to be registered in its name as Trustee hereunder, or in its own name, or in the name of its nominee, or to take and keep the same unregistered, and to retain them or any part thereof, in such condition that they will pass by delivery.

Fifth. Subject to the control and written directions of the party of the first part, the Trustee is authorized and empowered to vote in person or by proxy upon all stocks or other securities held by it; to exchange the securities of any corporation for other securities issued by the same, or by any other corporation, at such times and upon such terms

and conditions as the Trustee shall deem proper; to consent to the reorganization, consolidation or merger of any corporation, or to the sale or lease of its property, or any portion thereof, to any person or corporation of his or its property or any portion thereof, to such corporation, and upon such reorganization, consolidation, merger, sale or lease to exchange the securities held by it for the securities issued in connection therewith; to pay all assessments, subscriptions and other sums of money as the Trustee may deem expedient for the protection of its interests as holder of any stocks, bonds or other securities of any corporation, and to exercise any option contained in any stocks, bonds or other securities, for the conversion of the same into other securities, or take advantage of any rights to subscribe for additional stocks, bonds or other securities, and to make any and all necessary payments therefor, and generally to exercise in respect of all stocks, bonds or other investments held by the Trustee hereunder all rights, powers and privi- [fol. 20] leges as are or may be lawfully exercised by any person owning similar property in his own right.

Sixth. The Trustee shall be entitled to receive as compensation for its services in the administration of this trust a commission of 2½% upon income, and is hereby authorized to deduct such commissions before paying the income to the beneficiary or beneficiaries hereunder.

The Trustee also shall be entitled to a commission of 1% upon the market value of the principal of the trust fund, of which one-half shall be paid upon the execution of this indenture, and the balance when and as the trust shall terminate; said market value to be computed as of the date of this indenture as regards property and securities comprising the original trust fund.

The Trustee is also authorized in the discharge of its duties to employ counsel and agents and to determine and pay to them reasonable compensation, and it shall be entitled to reimbursement for the same, and for such other expenses and charges as it may deem necessary and proper to incur.

Seventh. Nothwithstanding anything to the contrary herein contained, the party of the first part may, from time to time, during the continuance of the trust, by instrument

in writing executed and acknowledged in the manner required for a deed of real property so as to enable it to be recorded in the State of New York and delivered to the Trustee, modify or alter in any manner, or revoke in whole or in part, this indenture and the trusts then existing, and the estates and interests in property hereby created, and in case of such revocation said instrument shall direct the [fol. 21] disposition to be made of the trust fund, or of the portion thereof affected by such revocation, and the Trustee shall make, execute and deliver such instruments, if any, and make such conveyances and transfers of property as may be necessary or proper in order to carry the same into effect, and no one shall have any right, interest or estate under this indenture except subject to the proper modification, alteration or revocation thereof.

Eighth. The party of the first part covenants and agrees to make, execute and deliver in due form of law such other and further assignments, conveyances or other instruments as the Trustee may deem requisite or necessary to effectuate the purposes hereof.

Ninth. The Trustee is further authorized and empowered to pay any and all taxes which properly may become payable from time to time, under the laws of the United States, or of any state, county or municipality on said trust property, or for any transfer thereof or transaction affecting the same, and to affix and cancel tax stamps in accordance with the provisions of said laws.

Tenth. The Trustee by joining in the execution of this instrument signifies its acceptance of the trust.

Eleventh. It is mutually agreed that these presents shall extend to and be obligatory upon the executors, administrators, legal representatives and successors, respectively, of the parties hereto.

This instrument is made in duplicate, each of which is an original, but both together shall be deemed one and the [fol. 22] same instrument.

In witness whereof the party of the first part has hereunto set his hand and seal, and the party of the second part has caused these presents to be signed by a Vice-President and its corporate seal to be hereunto affixed and attested

by an Assistant Trust Officer as of the day and year first above written.

Charles A. Corliss. (Seal.) Signed, sealed and delivered in the presence of Horatio R. Reed. Bankers Trust Company, by H. F. Wilson, Jr., Vice-President. Attest: P. E. Godridge, Assistant Trust Officer. (Seal.)

STATE OF NEW YORK,
County of New York, ss:

On this 3rd day of January, 1923, before me came Charles A. Corliss, to me known to be the individual described in and who executed the foregoing instrument, and acknowledged that he executed the same.

John Nicholas, Notary Public, Queen's County, No. 3102. New York Co. Clerk's No. 158, Register No. 4112. Commission expires March 30, 1924.

[fol. 23] STATE OF NEW YORK,
County of New York, ss:

On this 3rd day of January, 1923, before me personally came H. F. Wilson, Jr., to me known, who being by me duly sworn, did depose and say that he resides at Upper Montclair, N. J.; that he is a Vice-President of Bankers Trust Company, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument in such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

John Nicholas, Notary Public, Queen's County, No. 3102. New York Co. Clerk's No. 158, Register No. 4112. Commission expires March 30, 1924.

[fol. 24] SCHEDULE "A"

$10,000 American Power & Light Deb. 6s.
$10,000 Poole Engineering Co. 6s.
$5,000 Minneapolis & St. Louis R. R. 1st Cons. 5%.

"EXHIBIT B" TO COMPLAINT

Form 1041
U. S. Internal Revenue

(Auditor's Stamp)

FIDUCIARY RETURN OF INCOME
For Calendar Year 1924

Do Not Write in These Spaces

File
Code

Serial
Number

Examined

By

Date Received

Or for period begun ....., 1923, and ended , 1924

File This Return Not Later Than the 15th Day of the Third Month Following the Close of the Taxable Year
(PRINT PLAINLY AND ADDRESS PLAINLY BELOW.)

Name of Estate or Trust: CHARLES A. CORLIES

Name and Address of Fiduciary:
Bankers Trust Company
16 Wall Street
New York City.

1. Was a return of income for 1923 filed on behalf of the estate or trust named above?		
2. If so, to what collector's office was it sent (give district or city and State)?		
3. Give date of creation of trust or decedent's death 12/28/22		
INCOME		
1. Income from Trade or Business. (From Schedule A)		
2. Interest on Bank Deposits, Notes, Mortgages, and Corporation Bonds		
3. Income from Partnerships, Fiduciaries, etc. (From Schedule B)		
4. Rents and Royalties. (From Schedule C)		
5. Profits from Sale of Real Estate, Stocks, Bonds, etc. (From Schedule D)	302	00
	123,521	25

"EXHIBIT B" TO COMPLAINT

Form 1041
U. S. Internal Revenue

FIDUCIARY RETURN OF INCOME
For Calendar Year 1924

Do Not Write in These Spaces

File No.
Code
Serial Number
Examined
By
Date Received

Or for period begun ..... 1923, and ended .1924

File This Return Not Later Than the 15th Day of the Third Month Following the Close of the Taxable Year
(PRINT NAMES AND ADDRESS PLAINLY BELOW)

Name of Estate or Trust: CHARLES A. CORLIES

Name and Address of Fiduciary: Bankers Trust Company, 16 Wall Street, New York City.

1. Was a return of income for 1923 filed on behalf of the estate or trust named above?			
2. If so, to what collector's office was it sent (give district or city and State)?			
3. Give date of creation of trust or decedent's death	12/28/22		
INCOME			
1. Income from Trade or Business. (From Schedule A)			
2. Interest on Bank Deposits, Notes, Mortgages, and Corporation Bonds			
3. Income from Partnerships, Other Estates, etc. (From return of fiduciary of partnership, etc.)			
4. Rents and Royalties. (From Schedule B)			
5. Profits from Sale of Real Estate, Stocks, Bonds, etc. (From Schedule C)	302	00	
6. Dividends on Stock of Domestic Corporations	123,521	25	
7. Other Income (including dividends received on stock of foreign corporations). (Show nature of income)			
(a)			
(b)			
(c)			123,219 25
Total Income as from 1 to 7			
DEDUCTIONS			
8. Interest Paid			
10. Taxes Paid	134	92	
11. Losses by Fire, Storm, etc. (Explain in note on page)			
12. Bad Debts. (Explain in Schedule D)			
13. Contributions. (Explain in Schedule E)			
14. Other Deductions Authorized by Law. (Explain in Schedule D)	3,190	82	
15. Total Deductions as from 9 to 14			3,353 74
16. Net Income (Item 8 minus Item 15)			

17.

BENEFICIARIES' SHARES OF INCOME AND CREDITS
(See Instruction 10)

1. Name and Address of Each Beneficiary (If Corporation, Give Principal Office)	2. Per-centage of Each Interest	Income (Item 6 above) 3. Attributable to 1923	4. Attributable to 1924	Balance of Net Income (Item 16 minus Item 6) 5. Attributable to 1923	6. Attributable to 1924	Capital Net Gain or Loss (Schedule D, minus 6) 7. Attributable to 1923	8. Attributable to 1924	9. Income Tax Paid or Payable on Net Gain Shown in Item 8	10. Income and Profits Taxes Paid or Payable to Foreign Countries and United States Possessions
(a) Anne P. Corlies			123,521 25		3333 74				
(b)									
(c)									
(d)									
(e)									
(f) Name and address of Grantor Charles A. Corlies									
(g)									
(h)									
(i) Totals									

NONTAXABLE OBLIGATIONS OR SECURITIES

1. Description of Securities	2. Amount Owned	3. Interest Received
(a) Obligations of a State, Territory, or any political subdivision thereof, or the District of Columbia	53,000	1725 31
(b) Securities issued under the provisions of the Federal Farm Loan Act, or under such Act as amended		
(c) Liberty 3½% Bonds and other obligations of United States issued before Sept. 1, 1917, and obligations of United States possessions		
(d) Liberty 4% and 4½% Bonds and other obligations of the United States issued after September 1, 1917	57,000	2435 35

SCHEDULE A INCOME FROM TRADE OR BUSINESS (See Instruction 3)

1. Total receipts from trade or business (state kind of business) _____ $ _____

Cost of Goods Sold

2. Labor _____ $ _____
3. Material and supplies _____
4. Merchandise bought for sale _____
5. Other costs (Itemize below or on separate sheet) _____
6. Plus Inventory at beginning of year _____
7. Total (Lines 2 to 6, inclusive) _____ $ _____
8. Less inventory at end of year _____
9. Net Cost of Goods Sold (Line 7 minus Line 8) _____ $ _____

Other Business Deductions

10. Salaries, exclusive of "Labor," reported on Line 2 _____ $ _____
11. Interest on business indebtedness to others _____
12. Taxes on business and business property _____
13. Losses by fire, storm, etc. (explain in table provided therefor at foot of page) _____
14. Bad debts arising from sales _____
15. Depreciation, obsolescence, and depletion (explain in table provided therefor at foot of page) _____
16. Rent, repairs, and other expenses (Itemized below or on separate sheet) _____
17. Total (Lines 10 to 16, inclusive) _____ $ _____

18. Total Deductions (Line 9 plus Line 17) _____ $ _____
19. Net Income (Line 1 minus Line 18) (Enter as Item 1) _____ $ _____

Explanation of deductions claimed on Lines 8 and 14 _____

SCHEDULE B—INCOME FROM RENTS AND ROYALTIES (See Instruction 4)

1. Kind of Property	2. Amount Received	3. Cost	4. Value as of March 1, 1913	5. Depreciation (Explain in table at foot of page)	6. Repairs	7. Other Expenses (Itemize below)	8. Net Income (Enter as Item 4)
	$	$	$	$	$	$	$

Explanation of deductions claimed in Column 7

SCHEDULE C—PROFIT FROM SALE OF REAL ESTATE, STOCKS, BONDS, ETC. (See Instruction 5)

1. Kind of Property	2. Date Acquired	3. Amount Received	4. Depreciation Previously Allowed	5. Cost	6. Value as of March 1, 1913	7. Depreciation Subsequent	8. Net Profit (Enter as Item 5)
Stocks	1923	26,698 00	$	27,000 00	$	$	$ 302 00
		Sales of securities belonging to the principal of this trust have resulted either in a net loss or in a profit of less than $1,000. No part of the proceeds of any sale was distributable to the beneficiaries of the trust.					

State how property was acquired _____

SCHEDULE D—CAPITAL NET GAIN OR LOSS FROM SALE OF ASSETS HELD MORE THAN TWO YEARS (See Instruction 5a)

1. Kind of Property	2. Date Acquired (Mo. Day Year)	3. Date Sold (Mo. Day Year)	4. Amount Received	5. Depreciation Previously Allowed	6. Cost	7. Value as of March 1, 1913	8. Subsequent Improvements and Capital Expenditures	9. Net (Excess of Item 4 or Item 5 over Item 8)
			$	$	$	$	$	$

State how property was acquired _____

EXPLANATION OF DEDUCTION FOR LOSSES BY FIRE, STORM, ETC., CLAIMED IN SCHEDULE A AND IN ITEM 11

1. Kind of Property	2. Date Acquired	3. Cost	4. Value as of March 1, 1913	5. Subsequent Improvements	6. Depreciation Previously Allowed	7. Insurance and Salvage Value	8. Net Loss (Enter as Item 11)
		$	$	$	$	$	$

EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULES A AND B

1. Kind of Property (If building, state material of which constructed)	2. Date Acquired	3. Age When Acquired	4. Probable Life After Acquisition	5. Cost	6. Value as of March 1, 1913	Amount of Depreciation Claimed: 7. For this year	8. This year
				$	$	$	$

SCHEDULE E—EXPLANATION OF DEDUCTIONS CLAIMED IN ITEMS 12, 13, AND 14

_____

_____

_____

AFFIDAVIT

I swear (or affirm) that this return, including the accompanying schedules and statements (if any), has been examined by me, and, to the best of my knowledge and belief, is a true and complete return made in good faith for the accounting period as stated, pursuant to the Revenue Act of 1926 and the Regulations issued under that authority thereof.

Sworn to and subscribed before me this _____ day of _____, 192_

_____
(Signature of fiduciary or officer if corporation)

_____
(Title of officer, if corporation)

An amended return must be plainly marked "Amended" across face of return.

"EXHIBIT C" TO COMPLAINT

Form 1040
U. S. Internal Revenue

INDIVIDUAL INCOME TAX RETURN

FOR NET INCOMES OF MORE THAN $5,000
OR NET INCOMES, REGARDLESS OF AMOUNT, IF DERIVED FROM A PROFESSION OR BUSINESS, INCLUDING FARMING

For Calendar Year 1924

If Your Income is Computed on a Fiscal Year Basis, or Income is Received from a Partnership or Fiduciary Computed on a Fiscal Year Basis, Form 1065FY Should be Secured from the Collector and Filed in Lieu of This Form

File This Return with the Collector of Internal Revenue for Your District on or Before March 15, 1925
(PRINT NAME AND ADDRESS PLAINLY BELOW)

Charles A. Corliss
(Name)
131 Hudson St.
(Street and number, or rural route)
New York City
(Post office) (State)

Do Not Write in These Spaces

File No.
Code
Serial Number
First Payment
$
Examined
By
(Collector's Stamp)
Cash Check M. O. Cert. of Ind

OCCUPATION, PROFESSION, OR KIND OF BUSINESS: President of Lamont, Corliss & Co.

1. Are you a citizen or resident of the United States? Yes
2. If you filed a return for 1923, to what Collector's office was it sent? Second Dist., N.Y.
3. Is this a joint return of husband and wife? No
4. Were you married and living with husband or wife on the last day of your taxable year? Yes
5. If not, were you on the last day of your taxable year supporting one or more persons living in your household who are closely related to you by blood, marriage, or adoption?
6. If your status in respect to questions 4 and 5 changed during year, state date of such change: No change
7. How many dependent persons (other than husband or wife) under 18 years of age or incapable of self-support because mentally or physically defective were receiving their chief support from you on the last day of your taxable year? None

Item and Schedule No.	INCOME	Amount received	Deductions not allowed		
1.	Salaries, Wages, Commissions, etc. (State name and address of persons from whom received) Lamont, Corliss & Co. 131 Hudson St., N.Y.C.			56,500	00
	Director's fees from various corporations			3,520	00
2.	Income from Business or Profession. (From Schedule A)				
3.	Interest on Bank Deposits, Corporation Bonds, etc. (except interest upon which a tax was paid at source)			2,784	66
	(a) Interest on Tax-free Covenant Bonds Upon Which a Tax was Paid at Source			60	00
4.	Income from Partnerships, Fiduciaries, etc. (State name and address of partnership, etc.)				
5.	Rents and Royalties. (From Schedule B)				
6.	Profit from Sale of Real Estate, Stocks, Bonds, etc. (From Schedule C)			21,381	75
7.	Dividends on Stock of Domestic Corporations			53,483	67
8.	Taxable Interest on Liberty Bonds, etc. (From Schedule D)				
9.	Other Income (including dividends received on stock of foreign corporations). (State source of income)				
	(a) Dividends on stock of foreign corporations			1,664	22
	(b) Final liquidating dividend on stock - reported as closed transaction in 1922 at time of receipt of what was then believed to be final dividend.			755	57
	(c)				
10.	Total Income as Items 1 to 9				140,089 67
	DEDUCTIONS				
11.	Interest Paid			3,979	98
12.	Taxes Paid. (Explain in Schedule F)			1,345	26
13.	Losses by Fire, Storm, etc. (Explain in Table on page 2)				
14.	Bad Debts. (Explain in Schedule F)				
15.	Contributions. (Explain in Schedule F)			2,999	99
16.	Other Deductions Authorized by Law. (Explain below or on separate sheet)				
	(a)				
	(b)				
	(c)				
17.	Total Deductions as Items 11 to 16				8,324 63
18.	Net Income (Item 10 minus Item 17)				131,765 24

COMPUTATION OF TAX

19.	Earned Income (see Instruction 19)	10000	00	20. Net Income (Item 18 above)	131765 24	41. Normal Tax (1% of Item 37)	80 00
21.	Less Personal Exemption and Credit for Dependents	8500	00	21. Less Dividends (Item 7 above)	53483 67	42. Normal Tax (4% of Item 38)	160 00
22.	Balance (Item 19 minus 21)	1500	00	22. Interest on Liberty Bonds, etc. (Item 8)		43. Normal Tax (8% of Item 40)	4066 88
23.	Amount taxable at 2% (not over the first $4,000 of Item 22)	4000	00	23. Personal Exemption	2500 00	44. Surtax on Item 18 (see Instruction 20)	28773 14
24.	Amount taxable at 4% (not over the second $4,000 of Item 22)	3500	00	24. Credit for Dependents		45. Adjustment for Capital Gain or Loss (12½% of Column 9, Schedule D)	1078 53
25.	Amount taxable at 6% (balance over $8,000 of Item 22)			25. Total of Items 21, 22, 23, and 24	55983 67	46. Total of Items 41 to 45	32001 50
26.	Normal Tax (2% of Item 22)	80	00	26. Balance (Item 20 minus 25)	75781 57	47. Less Credit of 25% of Tax on Earned Net Income (Item 29)	55 00
27.	Normal Tax (4% of Item 23)	140	00	27. Amount taxable at 2% (not over the first $4,000 of Item 26)	4000 00	48. Total Tax (Item 46 minus 47)	31946 50
28.	Normal Tax (6% of Item 24)			28. Balance (Item 26 minus 27)	71781 57	49. Less Income Tax paid at source	1 20
29.	Normal Tax on Earned Net Income (total of Items 26, 28, and 27)	220	00	29. Amount taxable at 4% (not over the second $4,000 of Item 26)	4000 00	50. Income and Profits Taxes paid to foreign country or U. S. possession	
30.	Credit of 25% of Item 29 (not to exceed 25% of Items 41, 42, and 43)	55	00	30. Amount taxable at 6% (balance over $8,000 of Item 26)	67781 57	51. Balance of Tax (Item 48 minus Items 49 and 50)	31945 30

An amended return must be marked "Amended" at top of return. Checks and drafts will be accepted only if payable at par

SCHEDULE A--INCOME FROM BUSINESS OR PROFESSION (See Instruction 7)

1. Total

2. Labor
3. Mater
4. Manuf
5. Other
6. Plus t
7.
8. Less i
9. Net i

This taxpayer is the grantor of a trust which, during all of 1924, was revocable. The income of such trust was payable to a beneficiary other than this taxpayer. The income of the trust in 1924 was as follows:

Dividends on stock of domestic corporations	$123,521.25
Other income	3,335.74
Loss on sale of securities by Trustee	302.00
Interest on 4 1/4% Liberty Loan bonds, principal amount $57,000	2,415.15
Exempt interest on municipal and state bonds	1,725.31

The above income is reported herewith, pursuant to Section 219 (g) of the Revenue Act of 1924 and the Regulations of the Treasury Department. The tax payable on this return has been computed, however, by this taxpayer without regard to such income, for the reason that this taxpayer believes and contends that the said provisions of the Revenue Act of 1924 and the Treasury Regulations taxing such income to this taxpayer are unconstitutional and void.

Explanation of deductions claimed in Column 7:

SCHEDULE C—PROFIT FROM SALE OF REAL ESTATE, STOCKS, BONDS, ETC. (See Instruction 6)

1. Kind of Property	2. Date Acquired	3. Amount Received	4. Depreciation Previously Allowed	5. Cost	6. Value as of March 1, 1913	7. Subsequent Improvements	8. Net Profit (Enter on Line 6)
							21,321 75

State how property was acquired

SCHEDULE D—CAPITAL NET GAIN OR LOSS FROM SALE OF ASSETS HELD MORE THAN TWO YEARS (See Instruction 6a)

1. Kind of Property	2. Date Acquired Mo. Day Year	3. Date Sold Mo. Day Year	4. Amount Received	5. Depreciation Previously Allowed	6. Cost	7. Value as of March 1, 1913	8. Subsequent Improvements, and Capital Expenditures	9. Net Profit (Enter Here and on Line 6a)
								6,628 26

State how property was acquired

SCHEDULE E—INTEREST ON LIBERTY BONDS AND OTHER OBLIGATIONS OR SECURITIES (See Instruction 8)

1. Obligations or Securities	2. Amount Received or Accrued	3. Amount Owned	4. Par Value Amount Exempt from Taxation	5. Amount Owned at Beginning of Taxable Year	6. Interest on Amount at Rates of Beginning of Taxable Year (Enter on Line 8)
(a) Obligations of a State, Territory, or political subdivision thereof, or the District of Columbia	$ 1,001 60		All	xxxxxx xx	xxxxxx xx
(b) Securities issued under Federal Farm Loan Act, or under such Act as amended			All	xxxxxx xx	xxxxxx xx
(c) Liberty 3½% Bonds and other obligations of United States issued before Sept. 1, 1917, and obligations of possessions of the United States			All	xxxxxx xx	xxxxxx xx
(d) Liberty 4% and 4½% Bonds, Treasury 4½% Bonds, Treasury Certificates, and Treasury (War) Savings Certificates			$8,000	$	$
(e) Liberty 4% and 4½% Bonds			$50,000		
(f) Treasury Notes			None		

EXPLANATION OF DEDUCTION FOR LOSSES BY FIRE, STORM, ETC., CLAIMED IN SCHEDULE A, AND IN ITEM 13

1. Kind of Property	2. Date Acquired	3. Cost	4. Value as of March 1, 1913	5. Subsequent Improvements	6. Depreciation Previously Allowed	7. Insurance and Salvage Value	8. Net Loss (Enter on Line 13)

EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULES A AND B

1. Kind of Property (If buildings, state material of which constructed)	2. Date Acquired	3. Life When Acquired	4. Remaining Life After Acquisition	5. Cost	6. Value as of March 1, 1913	Amount of Depreciation Claimed On: 7. Previous years	8. This year

Contributions

Englewood Hospital Building Fund	$2,499.99
East Side Y. M. C. A.	25.00
Trustees of Phillips Academy	15.00
Social Service Federation of Englewood	100.00
Englewood Hospital Assoc.	100.00
Bergen County Tuberculosis Assoc.	5.00
Tuberculosis Assoc., T. L. Lamont, Treas.	5.00
Union Theological Seminary	250.00
Total	$2,999.99

I swear (or
is a true and co

Sworn to a

my knowledge and belief,
r authority thereof.

100	shares	Kennecott Copper Company.
100	"	Standard Milling Company, common.
100	"	Central Aguirre Sugar, common.
100	"	Universal Leaf Tobacco, common.
50	"	Virginia Iron Coal & Coke, preferred.
500	"	Pennok Oil Company.
100	"	Loew's Inc.
50	"	Chemical Bank.

(Here follow Exhibits "B" and "C," side folios 25, 26, 27, and 28)

[fol. 29] "EXHIBIT D" TO COMPLAINT

Treasury Department, Washington

Office of Commissioner of Internal Revenue

IT:PA-3-6OD. JHJ

Dec. 9, 1926.

Mr. Charles A. Corliss, 131 Hudson Street, New York, New York.

SIR: The determination of your income tax liability for the taxable years 1922, 1923 and 1924, as set forth in office letter dated October 23, 1926 disclosed a deficiency in tax amounting to $44,910.88 for the year 1924, and an over-assessment amounting to $464.94 for the year 1923. The adjustments made are explained in detail in the attached statement.

In accordance with the provisions of Section 274 of the Revenue Act of 1926, you are allowed 60 days from the date of mailing of this letter within which to file a petition for the re-determination of this deficiency. Any such petition must be addressed to the United States Board of Tax Appeals, Earle Building, Washington, D. C., and must be mailed in time to reach the Board within the 60-day period, not counting Sunday as the sixtieth day.

[fol. 30] Where a taxpayer has been given an opportunity to file a petition with the United States Board of Tax Appeals and has not done so within the 60 days prescribed and an assessment has been made, or where a taxpayer has filed a petition and an assessment in accordance with the final decision on such petition has been made, the unpaid amount of the assessment must be paid upon notice and demand from the Collector of Internal Revenue. No claim for abatement can be entertained.

If you acquiesce in this determination and do not desire to file a petition with the United States Board of Tax Appeals, you are requested to execute a wa-ver of your right to file a petition with the United States Board of Tax Appeals on the inclosed Form A, and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:PA-3-6OD; JHJ. In the event that you acquiesce in a part of the determination, the waiver should be executed with respect to the items to which you agree.

Respectfully, D. H. Blair, Commissioner, by C. R. Nash, Assistant to the Commissioner.

Inclosures: Statement, Form A, Form 882.

[fol. 31] IT:PA-3-6OD. JHJ

Statement

Dec. 9, 1926.

In re Mr. Charles A. Corliss, 131 Hudson Street, New York, New York

Year	Deficiency	Overassessment
1922	None	.....
1923	.....	$464.94
1924	$44,910.88	.....

The report of the Supervising Internal Revenue Agent at New York, New York, transmitted to this office under date of September 29, 1926, has been reviewed and approved as submitted.

This assessment is in addition to all other outstanding and unpaid assessments appearing upon the Collector's lists.

Payment of the tax should not be made until a bill is received from the Collector of Internal Revenue for your district, and remittance should then be made to him.

The right of appeal as indicated on page one of this letter refers only to any deficiency in tax indicated herein inasmuch as there is no provision in the Revenue Act of 1926 granting the right of appeal against the determination of any overassessment found upon an audit of your return.

The overassessment shown herein will be made the subject of a Certificate of Overassessment which will reach you in due course through the office of the Collector of Internal [fol. 32] Revenue for your district. If the tax in question has not been paid, the amount will be abated by the Collector. If the tax has been paid, the amount of overpayment will first be credited against unpaid income tax for another year or years and the balance, if any, will be refunded to you by check of the Treasury Department. It will thus be seen that the overassessment does not indicate the amount which will be credited or refunded, since a portion may be an assessment which has been entered but not paid.

"Exhibit DD" to Complaint

Treasury Department, Washington

Office of Commissioner of Internal Revenue

Address reply to Commissioner of Internal Revenue and refer to IT:PA:6OD-Conf.

Dec. 11, 1927.

Mr. Charles A. Corliss, 131 Hudson Street, New York, New York.

Sir: Reference is made to an informal conference held in this office on February 7, 1927, with your representative, Russell D. Morrill, relative to deficiency in tax of $44,910.88 for the year 1924 as set forth in office letter dated December 9, 1926.

[fol. 33] As a result of the consideration of your contentions the entire amount of dividends received from a re-

vocable trust has been allowed as a credit before computing normal tax. An amount of $3,637.74 representing cost of administration amounting to $3,335.74 and loss on sale of assets amounting to $302.00 has been allowed as a deduction in arriving at your total net income.

An examination of the Revenue Agent's report discloses that your net income was increased by $85.00 representing taxable interest on Liberty Bonds in the amount of $2,000.00 held in excess of the exemption allowed, but the agent did not allow this amount as a credit before computing normal tax. In the following recomputation of your 1924 tax liability the above error has been corrected:

Total net income		$251,733.75
Less:		
Personal exemption	$2,500.00	
Liberty Bond interest	85.00	
Ordinary dividends	53,483.67	
Dividends from trust	123,521.25	
		$179,589.92
Income subject to normal tax		$72,143.83
Normal tax at 2% on $4,000.00		80.00
Normal tax at 4% on $4,000.00		160.00
Normal tax at 6% on 64,143.83		3,848.63
Surtax on $251,733.75		73,678.83
Total		$77,767.46
Less: 12½% on capital loss $8,628.26		1,078.53
Balance		$76,688.93

[fol. 34] Credits

25% of tax on earned net income	$55.00	
Tax paid at source	1.20	
		56.20
Total tax assessable		$76,632.73
Tax previously assessed		31,945.30
Deficiency in tax		$44,687.43

"EXHIBIT E" TO COMPLAINT

(EXECUTE SEPARATE FORM FOR EACH TAX PERIOD)

TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE
FORM 843—Jan. 1928
Comptroller General U. S.
January 12, 1928

CLAIM FOR

- ☐ ABATEMENT OF TAX ASSESSED
- ☐ CREDIT AGAINST OUTSTANDING ASSESSMENTS
- ☐ REFUND OF TAXES ILLEGALLY COLLECTED
- ☐ REFUND OF AMOUNTS PAID FOR STAMPS USED IN ERROR OR EXCESS

IMPORTANT
File with Collector of Internal Revenue where assessment was made. Not acceptable unless completely filled in.

TERMS ROTATION
Div.
Amount number
Date received
Stamp here
Collector of Internal Revenue

State of New York } ss:
County of New York }

NOTICE TO COLLECTOR
Collector must indicate in block above the kind of claim, except in Income Tax cases.

Date received by Administrative Unit
Stamp here

CHARLES A. CORLISS,
(Name of taxpayer or purchaser of stamps.)

TYPE OR PRINT

131 Hudson Street,
(Residence—give street and number as well as city or town and State.)

New York, New York.
(Business address.)

This deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below with reference to said statement are true and complete:

1. Business in which engaged Executive
2. Character of assessment or tax Income Tax
3. Amount of assessment or stamps purchased Additional tax plus interest $ 48,338.32
4. Reduction of Tax Liability requested (Income and Profits Tax) $ 48,338.32
5. Amount to be abated $
6. Amount to be refunded (or such greater amount as is legally refundable) $ 48,338.32
7. Dates of payment (see Collector's receipts or indorsements of canceled checks) March 11, 1927
   (If statement covers income tax liability, items 8-11, inclusive, must be answered.)
8. District in which return (if any) was filed Second District of New York.

PERIOD	YEAR
From: Jan. 1,	19
To: Dec. 31	19

"EXHIBIT E" TO COMPLAINT

(EXECUTE SEPARATE FORM FOR EACH TAX PERIOD)

TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE
FORM 843—Jan. 1925
Comptroller General U. S.
January 15, 1925

CLAIM FOR

- ☐ ABATEMENT OF TAX ASSESSED
- ☐ CREDIT AGAINST OUTSTANDING ASSESSMENTS
- ☐ REFUND OF TAXES ILLEGALLY COLLECTED
- ☐ REFUND OF AMOUNTS PAID FOR STAMPS USED IN ERROR OR EXCESS

For TREASURY DEPARTMENT USE
Date
Amount number
Date received
Stamp here
Collector of Internal Revenue

IMPORTANT
File with Collector of Internal Revenue where assessment was made. Not acceptable unless completely filled in.

State of New York } ss:
County of New York }

NOTICE TO COLLECTOR
Collector must indicate in block above the kind of claim, except in Income Tax cases.

Date received by Administrative Unit
Stamp here

CHARLES A. CORTISS,
(Name of taxpayer or purchaser of stamps.)

TYPE OR PRINT

131 Hudson Street,
(Residence—give street and number as well as city or town and State.)

New York, New York.
(Business address.)

This deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below with reference to said statement are true and complete:

		PERIOD	YEAR
1. Business in which engaged	Executive	From:	19
2. Character of assessment or tax	Income Tax	To: Dec. 31	19 2[illegible]
3. Amount of assessment or stamps purchased	Additional tax plus interest		$ 48,338.32
4. Reduction of Tax Liability requested (Income and Profits Tax)			$
5. Amount to be abated			$
6. Amount to be refunded (or such greater amount as is legally refundable)			$ 48,338.32
7. Dates of payment (see Collector's receipts or indorsements of canceled checks)	March 11, 1927		
(If statement covers income tax liability, items 8-11, inclusive, must be answered.)			
8. District in which return (if any) was filed	Second District of New York.		
9. District in which unpaid assessment appears			
10. Amount of overpayment claimed as credit			
11. Unpaid assessment against which credit is asked; period from	to		$

Deponent verily believes that this application should be allowed for the following reasons:

(The reasons appear in the attached statement, which is made a part hereof, this space being inadequate.)

This refund claim is executed by the taxpayer by Russell D. Morrill as Attorney in Fact of the taxpayer, pursuant to the authority contained in the power of attorney of the taxpayer, dated January 26, 1927, a copy of which is attached hereto.

(Attach additional sheets if necessary.)

Sworn to and subscribed before me this 11th day of March 27

(Sgd.) James McCarron,
Notary Public, etc.
(Seal)
(Title.)

Signed:
RUSSELL D. MORRILL, as Attorney-in-Fact of Charles A. Cortiss

(This affidavit may be sworn to before a Deputy Collector of Internal Revenue or Revenue Agent without charge.)

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The deficiency in tax shown above will be assessed immediately and you will receive demand notice for payment of the tax from the Collector of Internal Revenue for your district.

Respectfully, C. R. Nash, Assistant to the Commissioner.

(Here follows Exhibit "E," side folio 35)

[fol. 36] The taxpayer filed an income tax return for the year 1924, excluding from taxable income therein the net income of a revocable trust created by him on December 28, 1922, but reporting such income in a rider attached to the return as follows:

"This taxpayer is the grantor of a trust which, during all of 1924, was revocable. The income of such trust was payable to a beneficiary other than this taxpayer. The income of the trust in 1924 was as follows:

Dividends on stock of domestic corporations	$123,521.25
Other income	3,335.74
Loss on sale of securities by trustee	302.00
Interest on 4¼% Liberty Loan Bonds, principal amount $57,000	2,415.15
Exempt interest on municipal and state bonds	1,725.31

The above income is reported herewith, pursuant to Section 219 (g) of the Revenue Act of 1924 and the Regulations of the Treasury Department. The tax payable on this return has been computed, however, by this taxpayer without regard to such income, for the reason that this taxpayer believes and contends that the said provisions of the Revenue Act of 1924 and the Treasury Regulations taxing such income to this taxpayer are unconstitutional and void."

The taxpayer did not receive in the year 1924, and has never received, either directly or indirectly, any part of the [fol. 37] said trust income, which income was paid by Bankers Trust Company, the trustee of said trust, to the beneficiary named in the deed of trust.

By letter dated February 11, 1927 (IT:PA:60D-Conf.) the Commissioner of Internal Revenue notified the taxpayer of the determination of a deficiency in tax for the year 1924 of $44,687.43, which deficiency resulted from the inclusion in his taxable income of the income of the said revocable trust, as shown above.

The taxpayer subsequently received from the Collector of Internal Revenue a bill dated March 9, 1927, for an additional 1924 tax of $44,687.43, plus interest of $1,115.43, or an aggregate amount of $48,803.26. The bill showed a credit against the latter amount of $464.94 on account of an overassessment for the year 1923, and a net amount due of $48,338.32. The taxpayer paid such latter amount on March 11, 1927.

The taxpayer claims the refund of the said additional tax and interest paid for the year 1924, and interest thereon, on the ground that the provisions of the Revenue Act of 1924, and the Treasury Regulations pertaining thereto, taxing the income of the aforesaid revocable trust to this taxpayer, are unconstitutional and void.

Know all men by these presents, that I, Charles A. Corliss, do hereby appoint Walter S. Orr, Russell D. Morrill, and Henry Mannix of Messrs. White & Case, as my attorney and attorneys in my name and in my behalf to represent me in any and all proceedings between me and the Treasury Department of the United States Government relative to my income and profits tax liability or any other [fol. 38] tax liability for all years, granting unto my said attorneys and each of them full power to appear in my behalf before proper officials of the Treasury Department, and to adjust, settle, compromise or otherwise dispose of all questions relative to the said tax liability, and to receive any papers, letters or other communications concerning the same; and to execute and file in my behalf any and all claims whether refund or otherwise and whether relating to taxes already paid by me or which may be paid by me in the future.

In witness whereof, I have hereunto set my hand and seal this 26th day of January, 1927.

Charles A Corliss. (L. S.)

State of New York,
County of New York, ss:

On this 26th day of January, 1927, before me personally came Charles A. Corliss to me known and known to me to be the individual described in and who executed the foregoing Power of Attorney and acknowledged to me that he executed the same.

Raymond L. Turner, Notary Public, Nassau County.
Certificate filed in New York County, No. 38.
(Seal.)

[fol. 39] "EXHIBIT F" TO COMPLAINT

Treasury Department, Washington

Office of Commissioner of Internal Revenue

Address reply to Commissioner of Internal Revenue and refer to IT-C-PrA. EK-7.

Mar. 23, 1927.

Mr. Charles A. Corliss, % Mr. Russell D. Morrill, 131 Hudson Street, New York, N. Y.

SIR: Your claim for the refund of $48,338.32, individual income tax for 1924, has been considered.

The claim is based on the statement that income from a revocable trust, of which you were the grantor, was taxed to you under section 219 g) of the Revenue Act of 1924, and that the said provision of law and Treasury Regulations promulgated thereunder are unconstitutional and void.

In accordance with I. T. 2204, the taxability of the said trust income to the settlor is pursuant to the provision of law cited above, and Article 347 of Regulations 65.

It is held by this office that the law and regulation involved in the case are constitutional and not void, and that any question in respect of the validity thereof should [fol. 40] be the subject of judicial determination.

The claim will, therefore, be rejected.

This rejection will officially appear on the next schedule to be approved by the Commissioner.

Respectfully, C. R. Nash, by W. T. Sherwood, Head of Division.

IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

OPINION

MACK, C. J.:

Motion to dismiss complaint in an action to recover income taxes collected pursuant to Section 219 (g) and (h) of the Revenue Act of 1924, 43 Stat. 277.

The complaint sets forth that in 1922, plaintiff established a "bona fide" trust of personalty, the income to be [fol. 41] paid to his wife with remainders over for his children. The instrument reserved to the settlor full control over the trust investments and provided:

"Notwithstanding anything to the contrary herein contained, the party of the first part may, from time to time, during the continuance of the trust by instrument in writing and acknowledged * * * modify or alter in any manner, or revoke in whole or in part, this indenture and the trusts then existing, and the estates and interests in property hereby created, and in case of such revocation said instrument shall direct the disposition to be made of the trust fund * * * and no one shall have any right, interest or estate under this indenture except subject to the proper modification, alteration or revocation thereof."

The complaint further shows that during the year 1924, the net income from the trust, $124,325.97, was paid over to the wife; and that plaintiff was assessed in respect thereto $44,687.43. The action is to recover this sum paid under protest.

The relevant statutory provisions are:

"(g) Where the grantor of a trust has, at any time during the taxable year, either alone or in conjunction with any person not a beneficiary of the trust, the power to revest in himself title to any part of the corpus of the trust, then the income of such part of the trust for such taxable year shall be included in computing the net income of the grantor.

[fol. 42] "(h) Where any part of the income of a trust may, in the discretion of the grantor of the trust, either alone or in conjunction with any person not a beneficiary of the trust, be distributed to the grantor or be held or

accumulated for future distribution to him, or where any part of the income of a trust is or may be applied to the payment of premiums upon policies of insurance on the life of the grantor (except policies of insurance irrevocably payable for the purposes and in the manner specified in paragraph (10) of subdivision (a) of section 214), such part of the income of the trust shall be included in computing the net income of the grantor."

The sole issues in this case are whether the statutory provisions are constitutional, and if so, whether they may constitutionally be applied to trusts created before their passage.

Under the Revenue Acts before that of 1924, there had been doubt and confusion as to whether the income from revocable trusts was taxable to the settlor or the beneficiary. Originally the settlor was held taxable; this administrative practice was reversed pursuant to an opinion by Solicitor Mapes of the Treasury Department (Cum. Bull. 1-2, p. 5, L. O. 1102). After the decision in Stoddard vs. Eaton, 22 F (2d) 184, the Department returned to its original practice. The Stoddard case is greatly limited by Warden vs. Lederer, 24 F. (2d) 233.

Meanwhile the committees of Congress in framing the 1924 Revenue Act sought, as the reports of both bodies said, "to prevent the evasion of taxes by means of estates and trusts." The report of the Senate Finance Committee also said:

[fol. 43] "The creation of a revocable trust constitutes nothing but an assignment of the right to future income. Since such an assignment does not operate to decrease the taxable income of the assignor, the creation of a revocable trust should not so operate, but the income of such trust should be included in the income of a grantor. The bill so provides."

It is properly conceded that the first sentence of the quotation from the Senate report is not a technically correct statement of the law. The creation of a revocable trust vests in the beneficiary a present estate in all respects valid until the power of revocation is exercised. Jones vs. Clifton, 101 U. S. 225; Van Cott vs. Prentice, 104 N. Y. 45. Bing vs. Bowers, 22 F. (2d) 450, a case within the language of the

quotation, illustrates the incorrectness of the quotation with respect to the present case. It was there held that a transfer of the right to the net proceeds of future rents from realty owned by and under the control of the donor was nothing but an assignment of the right to receive future income. Here the income arose from property equitably owned for life by the beneficiary; this income came immediately into her possession through the hands of the trustee. Plaintiff therefore argues that the holding in Eisner vs. Macomber, 252 U. S. 189, that Congress cannot constitutionally tax as income what is not in law income, logically implies that Congress cannot tax as plaintiff's income what is not his but his wife's income.

The Macomber case, however, is not authority for the proposition which plaintiff asserts. There Mr. Justice Pitney, f. 207, says:

"Here we have the essential matter: *Not* a gain *accruing* to capital, not a *growth* or *increment* of value *in* the invest-
[fol. 44] ment; but a gain, a profit, something of exchangeable value *proceeding* from the property, severed from the capital however invested or employed, and *coming in* being 'derived,' that is, *received* or *drawn by* the recipient (the taxpayer) for his *separate* use, benefit and disposal;—*that* is income derived from property."

But the context and the italicization show that the emphasis was not at all upon that part of the sentence which would be relevant here. The decision merely holds that since the power given by the Sixteenth Amendment was to tax income, only income could be taxed; there was no occasion to decide and there was no decision as against whom the income could be taxed. Regardless of whether or not the Solicitor of the Treasury Department was properly influenced by Eisner vs. Macomber in interpreting a doubtful statute, it is not a precedent on the present question of constitutionality.

It is abundantly clear from its legislative history that Congress passed the 1924 statute in order to prevent taxpayers from evading the surtaxes. The progressive rate is one of the vital features of the present system of income taxation. If income producing estates could be parcelled

out among donees having incomes in such a way that the donor paid no tax although he retained full powers of control and recapture, the surtax would be deprived of efficacy, and the income tax thereby greatly limited despite the fact that a tax at the basic rate would still be collectible.

It is not contended that the power to lay an income tax enables Congress to pass every statute necessary to an effi- [fol. 45] cient functioning of the income tax law in all its aspects. Just as the doctrine of Purity Extract Co. vs. Lynch, 226 U. S. 192, has its limits in the field of the police power, Weaver vs. Palmer Brothers Company, 270 U. S. 402, so too the correlative doctrine in the field of taxation has its limitation, Schlesinger vs. Wisconson, 270 U. S. 230. But within limits, Congress concededly has power to "prevent evasion and give practical effect to the exercise of admitted power" (Nichols vs. Coolidge, 274 U. S. 531, at 542). In my judgment, Congress remained within these limits when it taxed income to the settlor under the present circumstances.

The New York Court of Appeals rightly characterized the income from a revocable trust as proceeding from his bounty and subject to his control, Van Cott vs. Prentice, supra, pages 52-3. Such a trust may in New York be reached by creditors (Section 145 of Real Property Law) probably even when it is a trust of personalty. The trust property may of course by a proper instrument be sold by the settlor or the income therefrom transferred before its accrual to a third person, such acts being implied assertions of his unqualified right to repossession. In the present case taxpayer expressly reserved unfettered power to sell and deal with the securities in the corpus of the trust; this would in any event have been possible by the exercise of his power of revocation. Income arising from property so completely subject to the settlor's needs and wishes may properly be taxed to him in order to effectuate the purposes of the surtax provisions. The pleader's conclusion that the creation of the trust herein involved was "bona fide" may be disregarded, for insofar as it means anything it means that the settlor had in view other purposes than reduction [fol. 46] of his tax liability; this does not alter the fact that the purpose of the surtax provisions are set at naught by the revocable trust.

It is contended that even if a statute antedating the creation of a trust can constitutionally tax to the settlor the income accruing therefrom, a statute imposing such a tax passed after the creation of the trust although within the year when the income accrued, is unconstitutional. Certain decisions under the estate tax may seem by analogy to support the contention. Nichols vs. Coolidge, supra, held invalid an estate tax under a 1919 statute upon an interest coming into possession and enjoyment upon the settlor's death in 1921 by virtue of a deed of trust given in 1907. This case was followed by the Court of Appeals for the Second Circuit in Farmers Loan and Trust Company vs. Bowers, decided November 12, 1928, as to an interest under a trust subject until the settlor's death to revocation by the joint act of himself and the trustee. It has likewise been held in the state courts, which, however are confined within narrower constitutional limitations, that the transfer tax is not validly applicable to interests passing at death under revocable trusts created before the passage of the taxing statute, Matter of Miller, 236 N. Y. 290; Matter of Carnegie, 203 App. Div. 91, 36 N. Y. 517; but an exception is made as to revocable trusts in which not even a defeasible present estate had been enjoyed in possession by the beneficiaries before the settlor's death though they had taken a vested interest before the taxing statute, Matter of Schmidlapp, 236 N. Y. 278.

But these cases are not in point for several reasons. In the first place, the decision of Nichols vs Coolidge does not [fol. 47] condemn all retroactive taxation, but only such as imposes an arbitrary burden upon the taxpayer. The tax here under consideration does not involve any features of arbitrariness in valuation or otherwise; moreover the settlor had the unrestricted power to shift the tax to the recipient of his bounty, unlike the situation in the Farmers Loan and Trust case. In the second place, Reinecke vs. The Northern Trust Company, Sup. Ct., Jan. 2, 1929; U. S. Daily, Jan. 4, 1929; and Saltonstall vs. Saltonstall, 276 U. S. 260, hold that a taxing statute is not retroactive although enacted after the creation of the trust, if the trust remains revocable by the settlor after the statute becomes effective. These cases, however, might be distinguished on their facts because in them, unlike the instant case, the beneficiaries did not come into actual enjoyment of the property until

after the expiration of the settlor's life estate and the enactment of the statute. As to this see Matter of Schmidlapp, supra. In the third place, holdings that a statute imposing a tax upon the privilege of transferring the corpus of a trust must antedate the transfer, carry no implications that a statute imposing a tax upon the current year's income of a trust created before the statute is subject to the objection of retroactivity.

Motion to dismiss granted.

[fol. 48] IN UNITED STATES DISTRICT COURT

PETITION AND ORDER FOR APPEAL

The plaintiff feeling himself aggrieved by the judgment made and entered herein on the 21st day of January, 1929, dismissing the complaint and awarding the defendant judgment against him for $20., and by the order of this Court filed herein January 16, 1929 granting defendant's motion to dismiss the complaint, does hereby appeal from said judgment and order, and from each and every part thereof, to the United States Circuit Court of Appeals for the Second Circuit for the reasons specified in the Assignment of Errors which is filed herewith, and prays for an order allowing said plaintiff to prosecute said appeal, that a transcript of the record and proceedings on which said final judgment was made may be duly authenticated and sent to the United States Circuit Court of Appeals for the Second Circuit, and that a citation be issued directed to said Frank K. Bowers, as Collector of Internal Revenue for the Second District of New York, to appear before the said United States Circuit Court of Appeals for the Second Circuit to do and receive what may appertain to justice to be done in the premises.

And your petitioner will pray, etc.

Charles A. Corliss, by White & Case, Attorneys for Plaintiff, Charles A. Corliss, 14 Wall Street, New York City.

[fol. 49] The foregoing appeal from the order entered herein on January 16, 1929, and the judgment entered herein on January 21, 1929 be and the same hereby is allowed.

Dated February 5, 1929.

J. W. Mack, U. S. D. J.

In United States District Court

Assignment of Errors

Charles A. Corliss conceiving himself aggrieved by the final judgment entered herein on January 21, 1929, and the order of Judge Julian W. Mack filed herein on January 16, 1929, now appears by his attorneys and presents with his notice of appeal, the following assignment of errors:

1. The Court erred in holding that the Bill of Complaint herein states no cause of action against the defendant.

2. The Court erred in dismissing the Bill of Complaint herein.

3. The Court erred in holding that Section 219 (g) of the Revenue Act of 1924 is constitutional.

[fol. 50] 4. The Court erred in holding that Section 219 (h) of the Revenue Act of 1924 is constitutional.

5. The Court erred in holding that the provisions of Section 219 (g) and (h) of the Revenue Act of 1924 have any application to income of revocable trusts created prior to June 2, 1924, the date the said statute became effective.

6. The Court erred in holding that Section 219 (g) and (h) of the Revenue Act of 1924 have any application to the income of revocable trusts accrued to or received by the Trustee between January 1, 1924, and June 2, 1924.

7. The Court erred in holding that the taxing statute in question, viz., Section 219 (g) and (h) of the Revenue Act of 1924 was retroactive.

8. The Court erred in holding that the tax sought to be levied b ythe Revenue Act of 1924, Section 219 (g) and (h) was authorized by the provisions of the Sixteenth Amendment to the Constitution of the United States.

9. The Court erred in holding that the tax sought to be levied under the provisions of Section 219 (g) and (h) of the Revenue Act of 1924 did not violate the provisions of the Fifth Amendment to the Constitution of the United States.

10. The Court erred in not holding that the taxing statute in question, viz., Section 219 (g) and (h) of the

Revenue Act of 1924 was unconstitutional by reason of the provisions of Section 2, Clause 3, and Section 9, Clause [fol. 51] 4, of Article 1 of the Constitution of the United States.

Wherefore said plaintiff prays that the judgment and order appealed from may be reserved and corrected and that a decree may be made sustaining said complaint.

Dated New York, February 4, 1929.

Yours, etc., White & Case, Attorneys for Plaintiff, 14 Wall Street, New York City.

[fol. 52] Citation, in usual form, omitted in printing.

[fol. 53] In United States District Court

[Title omitted]

Stipulation as to Record

It is hereby stipulated and agreed that the foregoing is a true transcript of the Record of said District Court in the above entitled action, as agreed upon by the parties.

Dated February 28, 1929.

White & Case, Attorneys for Plaintiff. Charles H. Tuttle, United States Attorney, Attorney for Defendant.

[fol. 54] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 55] In United States Circuit Court of Appeals, Second Circuit

Charles A. Corliss, Plaintiff-Appellant,

against

Frank K. Bowers, as Collector of Internal Revenue for the Second District of New York, Defendant-Appellee

Before Manton, L. Hand, and Chase, Circuit Judges

Appeal from the District Court for the Southern District of New York. Action to recover income taxes paid by the

plaintiff under duress. On motion, a judgment was entered dismissing the complaint; plaintiff appeals. Judgment affirmed.

OPINION

MANTON, Circuit Judge:

On December 29, 1922, appellant delivered a trust indenture to the trustee therein named, the Bankers Trust Company of New York City, together with corporate stocks and securities listed in the schedule annexed to [fol. 56] the indenture. It was a trust revokable at any time at the will of the settlor. The trustee was obligated to collect the income from the securities and pay them to the appellant's wife for the term of her life. Upon her death the principal of the trust was then to be paid in equal shares to the appellant's children then living and the issue of any deceased child or children, and in default thereof, to such persons as appellant's wife might designate and appoint. The trust was conceded to be valid under the laws of the State of New York. By its terms, the appellant reserved the right, in addition to revocation, to modify or alter in any manner, in whole or in part, the indenture and trust created thereby. The trust remained in this form in 1924 when the income for that year was paid by the trustee to the appellant's wife. The appellant received none of it. In appellant's report of his income for that year, he made note of this trust and the amount of the income, but claimed exemption from tax. He was later assessed $44,687.43 with interest on the income so paid to his wife, which he has paid under protest and now sues to recover it.

The appellant's contention is that § 219 (g-h) of the Act of 1924 (43 Stat. 277) under which this assessment was made, is unconstitutional because it requires him to pay a tax upon the income of another and, if it be constitutional, it is retroactive and therefore invalid as applied to income for 1924 upon the trust created in 1922. Section 219 provides:

"(g) Where the grantor of a trust has, at any time during the taxable year, either alone or in conjunction with any person not a beneficiary of the trust, the power to re- [fol. 57] vest in himself title to any part of the corpus of

the trust, then the income of such part of the trust for such taxable year shall be included in computing the net income of the grantor.

"(h) Where any part of the income of a trust may, in the discretion of the grantor of the trust, either alone or in conjunction with any person not a beneficiary of the trust, be distributed to the grantor or be held or accumulated for future distribution to him, or where any part of the income of a trust is or may be applied to the payment of premiums upon policies of insurance on the life of the grantor (except policies of insurance irrevocably payable for the purposes and in the manner specified in paragraph (10) of subdivision (a) of section 214), such part of the income of the trust shall be included in computing the net income of the grantor."

The moneys paid to the appellant's wife, as income from this trust, were taxable to her (Irwin vs. Gavit, 268 U. S. 161) prior to the 1924 Act. The trust indenture vested the legal title to the corpus of the estate in the trustee. (Jones vs. Clifton, 101 U. S. 225; The Farmers Loan & Trust Co. vs. Bowers, 29 Fed. [2nd] 14.) The present estate vested in the beneficiary, created by this revokable trust, was valid until the power of revocation was exercised. The question here is whether Congress had the power to tax the grantor of the trust for income paid to the beneficiary where the money, as income in the hands of the trustee, was paid to the beneficiary therein named. In Taft vs. Bowers (278 U. S. 470), an increase in the value of a gift accruing prior to the time the gift was made, while in the hands of the donor, was held to be subject to a tax to be paid by the donee when she, at a later date, sold the securities. A husband was held subject to the payment of a tax upon the whole of the income of community property held under a state statute of California and owned jointly by husband and wife in United States vs. Robbins (269 U. S. 315).

[fol. 58] Section 219, according to the legislative debates, was enacted to "secure clarity and prevent the evasion of taxes by means of estates and trusts". (House of Rep., Vol. 1, 68th Cong. 1st Session, dealing with H. R. 6715 [1924] Revenue Act, Senate Reports Vol. 1, p. 25 [1924]; 68th Congress, 1st Session, Vol. 4, p. 19-20). Congress, by

the 16th Amendment, was granted power to lay and collect taxes on incomes and we think, under the principle of the cases referred to, it could command a settlor of a revokable trust to pay a tax on income paid to a beneficiary in the scheme of lawful taxation if the method devised by Congress does not become arbitrary or capricious and violate the 5th amendment. A settlor of a revokable trust has a sufficient interest in the income of the trust and a relation thereto to justify the claim of a necessity for a fair and proper tax imposition requiring the settlor to pay. He, at all times, has the power to make the income derived from the trust, his own. To defeat tax evasion, at least the higher surtax, Congress, by this statute, has determined that a grantor who may change or modify the gift, even to putting an end to its continuance, must pay. By such a trust indenture, the grantor gives and the grantee receives with knowledge of who shall bear the burden of taxation. There is no constitutional reason against subjecting the settlor to such a tax and the 16th Amendment grants very general taxing power. (Brushaber vs. Union Pacific R. R. Co., 240 U. S. 1; Frew vs. Bowers, 12 Fed. [2nd] 625). If the taxation involves reasonableness to meet the desired ends of fair play, it is valid. (Nichols vs. Coolidge, 274 U. S. at 542.) And when the tax is arbi- [fol. 59] trary or capricious by reason of the terms of the taxing statute, it becomes void under the 5th Amendment. Where the trust is revokable, it is not unfair to tax the person who always has a will he may exercise and divert from the recipient a part or all of the income. As was said by us in Mitchell vs. Bowers (15 Fed. [2nd] 287), "Throughout the period the right of disposition remained."

By § 145 of the New York Real Property Law (where this indenture was made) when the grantor in the conveyance reserves to himself for his own benefit, a power of revocation, he is deemed the absolute owner of the estate conveyed so far as the rights of creditors and purchasers are concerned, illustrating how little the beneficiary obtains apart from the income. Under the federal Estate Tax Law, the terms "gross income" includes trust funds conveyed by a revokable indenture. (Reinecke vs. Northern Trust Co., 278 U. S. 339; Chase Natl. Bank vs. United States, 278 U. S. 327). This is because the grantor at all times had the power to make the funds his and the non-exercise of

the power is as much evidence of testamentary disposition as the exercise would be. The settlor might, if he wished, make each income payment under the grant his own. This he could do by exercising his power of revocation. Congress has expressed a sufficient reason and from the viewpoint of a revenue act, it is reasonable, if not commendable. This exercise of power, based upon reason for taxation, is within the power of Congress in its desire to prevent evasion and gives practical effect to the exercise of its admitted power. (Nichols vs. Coolidge, supra).

[fols. 60 & 61] The tax involved here is for the year 1924 and the indenture was made in 1922. It is argued that even if the statute is valid, it cannot be constitutional as applied to a trust created prior to its effective date. This assumed retroactivity. ' It does not invalidate the statute. The statute deals with the present condition with revocability residing in the settlor. Each payment of income which takes place after the passage of the statute is subject to its terms. Therefore, after the effective date of the taxing statute, this income was subject to taxation under its requirements. The taxing statute is not retroactive. (Reinecke vs. Northern Trust Co., supra; Chase Natl. Bank vs. United States, supra; Saltonstall vs. Saltonstall, 276 U. S. 260).

Judgment affirmed.

[fol. 62] In United States Circuit Court of Appeals, Second Circuit

Present: Hon. Martin T. Manton, Hon. Learned Hand, Hon. Harrie B. Chase, Circuit Judges.

Charles A. Corliss, Plaintiff-Appellant,

v.

Frank K. Bowers, as Collector, etc., Defendant-Appellee

Appeal from the District Court of the United States for the Southern District of New York

Decree—Filed July 1, 1929

This cause came on to be heard on the transcript of record from the District Court of the United States for the Southern District of New York and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is, affirmed, with costs.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

Wm. Parkin, Clerk.

[File endorsement omitted.]

[fol. 63] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 64] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 21, 1929

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 34,475. U. S. Circuit Court of Appeals, Second Circuit. Term No. 344. Charles A. Corliss, petitioner, vs. Frank K. Bowers, as Collector of Internal Revenue for the Second Distrct of New York. Petition for writ of certiorari and exhibit thereto. Filed August 27, 1929. File No. 34,475.

PETITION FOR A WRIT OF CERTIORARI

FILE COPY

FILED
AUG 27 1929
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1929.

No. 344

CHARLES A. CORLISS, PETITIONER,

v.

FRANK K. BOWERS, AS COLLECTOR OF INTERNAL REVENUE FOR THE SECOND DISTRICT OF NEW YORK, RESPONDENT.

PETITION FOR A WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT AND BRIEF IN SUPPORT THEREOF.

JOSEPH M. HARTFIELD,
Counsel for Petitioner.

RUSSELL D. MORRILL,
A. C. NEWLIN,
Of Counsel.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1929.

No.

CHARLES A. CORLISS, PETITIONER,

v.

FRANK K. BOWERS, AS COLLECTOR OF INTERNAL REVENUE FOR THE SECOND DISTRICT OF NEW YORK, RESPONDENT.

PETITION FOR A WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

The petition of Charles A. Corliss, the plaintiff, appellant below, respectfully shows as follows:

I. That this suit was brought in the United States District Court for the Southern District of New York to receiver federal income taxes paid by the petitioner to the respondent for the calendar year 1924, amount-

ing to $44,687.43, plus interest of $4,115.83, on the grounds that the Act of Congress approved June 2nd, 1924, and known as the "Revenue Act of 1924" (43 Stats. 253) was unconstitutional and void, in so far as the same had been asserted to exact said tax from petitioner, for the reason that it violated the provisions of Article I, Section 2, Clause 3, and Section 9, Clause 4, of the Constitution of the United States, and the Fifth and Sixteenth Amendments thereto.

II. The material allegations of the complaint in said action may be summarized as follows:

On December 29, 1922, the plaintiff, in New York City, delivered to Bankers Trust Company, a New York corporation, a trust indenture, a copy of which was annexed to the complaint (R. p. 15), and at the same time delivered to the trustee corporate stocks and bonds listed in the schedule annexed to the indenture. Under the terms of the trust indenture the securities listed in the schedule annexed thereto were assigned to the trustee, which was required to collect the income therefrom and to pay the same to Anne Parrish Corliss, the plaintiff's wife, for the term of her life. The indenture directs that upon the death of the life beneficiary the principal of the trust shall be paid in equal shares to the children of the plaintiff then living and to the issue of any deceased children and, in default thereof, to such persons as Anne Parrish Corliss shall in her Will designate and appoint.

The complaint expressly alleges that the trust so created "constituted a *bona fide* valid trust under the laws of the State of New York" (R. p. 6).

In the trust indenture the plaintiff reserved the right to "modify or alter in any manner, or revoke in whole or in part," the indenture and trusts created thereby (R. p. 20). The plaintiff at no time exercised any of such powers, and in the year 1924 the trustee paid over to Anne Parrish Corliss, the beneficiary, the entire net income from the trust for that year, amounting to $124,325.97. None of the income of the trust was paid or credited to the plaintiff or received by him in 1924, or in any other year.

Plaintiff reported no part of the income of the trust as taxable to him for the year 1924, but attached to his income-tax return for that year a rider disclosing the amount of the trust income and claiming an exemption from tax thereon. An additional tax of $44,687.43, with interest of $4,115.83, was thereafter assessed against the plaintiff, such assessment resulting solely from the inclusion in plaintiff's net income in 1924 of the net income of the trust ($124,325.97), all of which was paid to the beneficiary under the terms of the indenture. Plaintiff paid the additional tax and interest so assessed, and his claim for the refund thereof was rejected by the Commissioner of Internal Revenue.

III. Respondent Bowers filed a motion to dismiss the complaint of the petitioner and on the hearing in the District Court said motion was granted, the Court holding that subdivisions (*g*) and (*h*) of Section 219 of the Revenue Act of 1924 were constitutional, and were constitutional as applied to the income of a revocable trust created prior to their enactment. Said subdivisions read as follows:

"(*g*) Where the grantor of a trust has, at any time during the taxable year, either alone or in conjunction with any person not a beneficiary of the trust, the power to revest in himself title to any part of the corpus of the trust, then the income of such part of the trust for such taxable year shall be included in computing the net income of the grantor.

"(*h*) Where any part of the income of a trust may, in the discretion of the grantor of the trust, either alone or in conjunction with any person not a beneficiary of the trust, be distributed to the grantor or be held or accumulated for future distribution to him, or where any part of the income of a trust is or may be applied to the payment of premiums upon policies of insurance on the life of the grantor (except policies of insurance irrevocably payable for the purposes and in the manner specified in paragraph (10) of subdivision (*a*) of Section 214), such part of the income of the trust shall be included in computing the net income of the grantor."

IV. On appeal to the Circuit Court of Appeals for the Second Circuit the judgment of the District Court was unanimously affirmed. Three months have not elapsed since the entry of the order for mandate of the said Circuit Court of Appeals.

V. The statutory provisions in question represent a decided departure in income-tax legislation and raise important questions as to the constitutional limitations of Congress in such matters. The outcome of the case is a matter of great public interest and nation-wide

importance by reason of the numerous revocable trusts which will be affected thereby, and by reason of the effect which it will have on many other proceedings that now await the final disposition of this case.

VI. For the reasons set forth in the annexed brief your petitioner believes that the decisions of the said District Court and of the said Circuit Court of Appeals were erroneous and contrary to law, and that this honorable Court should require the case to be certified to it for review and determination in conformity with the Acts of Congress in such case made and provided.

WHEREFORE your petitioner respectfully prays that a Writ of Certiorari may issue out of and under the seal of this Court, directed to the United States Circuit Court of Appeals for the Second Circuit, commanding the said Court to certify and transmit to this Court, on a day certain to be therein designated, a full and complete transcript of the record and all proceedings of the said Circuit Court of Appeals in the said case therein entitled "Charles A. Corliss, Plaintiff-Appellant, against Frank K. Bowers, etc., Defendant-Appellee" (No. L—39—354), to the end that the said case may be reviewed and determined in this Court, as provided by Judicial Code, Section 240, as amended by Act of February 13, 1925 (43 Stats. 938), or that your petitioner may have such other relief or remedy in the premises as to this Court may seem appropriate and in conformity with the said Act, and that the said judgment of the said Circuit Court of Appeals

in the said case, and every part thereof, may be reversed by this honorable Court.

CHARLES A. CORLISS,
Petitioner,
By JOSEPH M. HARTFIELD,
Counsel.

Dated New York City, August —, 1929.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1929.

No.

CHARLES A. CORLISS, PETITIONER,

v.

FRANK K. BOWERS, AS COLLECTOR OF INTERNAL REVENUE FOR THE SECOND DISTRICT OF NEW YORK, RESPONDENT.

BRIEF IN SUPPORT OF PETITION.

Statement.

This action was commenced in the United States District Court for the Southern District of New York to recover Federal Income Taxes amounting to $44,687.43, plus interest of $4,115.83, paid by petitioner to respondent for the year 1924, on the ground that the provisions of the Revenue Act of 1924 which taxed to the donor the income of a revocable trust were unconstitutional. The material facts are set forth in Paragraph II of the accompanying petition.

The District Court rendered a judgment dismissing the complaint on January 21, 1929. A copy of the Court's opinion will be found at page 40 of the Record. The case is reported in 30 Fed. (2nd) 135. The Circuit Court of Appeals for the Second Circuit unanimously affirmed the judgment of the District Court. The opinion of the Circuit Court is not yet officially reported, but will be found at page 55 of the Record.

The Order for Mandate of the Circuit Court was filed July 1, 1929. The petitioner relies on Judicial Code Section 240, as amended by Act of February 13, 1925 (43 Stats. 938), as authority for the jurisdiction of this Court.

POINT I.

This action attacks the constitutionality of an important provision of the Revenue Act of 1924 and the corresponding provisions of the subsequent revenue acts, and raises questions of general and great immediate importance which have never been, but should be, decided by this Court.

As will appear from an examination thereof as set forth in the accompanying petition, subdivisions (*g*) and (*h*) of Section 219 of the Revenue Act of 1924 (in its relevant provisions) provided for the taxation to the donor of the income of a revocable trust, and of that part of the income of a trust which, under the terms of the trust indenture, might be distributed to the donor. In other words, the statute provided that income should be taxed to an individual who admittedly did not, and who, at the time of its payment, had no

right to, receive such income. Similar provisions are contained in all of the Federal Income Tax Acts since 1924.

Prior to the Revenue Act of 1924 the rule was otherwise and the beneficiaries of revocable trusts paid the taxes on trust income received by them. In L. O. 1102, I-2 Cumulative Bulletin 50, Mr. Carl A. Mapes, the then Solicitor of Internal Revenue, ruled that the Treasury Department could not tax the donor of a revocable trust on income which was received by another, citing *Eisner* v. *Macomber*, 252 U. S. 189, wherein it is stated that the tax is imposed upon income "received or drawn by the recipient" (p. 207). By the Revenue Act of 1924, therefore, Congress assumed authority to tax income of a revocable trust to either one of two persons, the grantor or the beneficiary. Such action raises questions of great and fundamental importance as to the constitutional limitations imposed on Congress in such matters.

So far as counsel have been able to ascertain, this Court has never passed upon the question of the constitutionality of such an act of Congress, nor, indeed, has this Court ever passed upon a case involving principles similar to those presented by this case. The recent decision of this Court in the case of *Taft* v. *Bowers* (49 Sup. Ct. 129) is not controlling. The statute reviewed in that decision provided that the tax should be borne by the recipient of the sum upon which the tax was imposed. Also, if the donee in the *Taft* case had not been taxed on the appreciation accruing in the hands of the donor, such appreciation would have

escaped taxation altogether, whereas in the present case, if the statute in question is unconstitutional, it is admitted that the tax on the trust income can be assessed against the beneficiary. For these reasons alone the *Taft* case is clearly distinguishable from the case at bar.

Since the statute involved represents a decided departure in income-tax legislation and since it raises such important and novel constitutional questions, it is submitted that this Court should pass upon the question of its validity.

Furthermore, the case raises a question of great public interest and nation-wide importance because of its immediate practical application. There are numerous revocable trusts now in existence and many others are constantly being created. Many of said trusts were created prior to March 1, 1913, the date when the present system of income taxation was first made effective. Many others were created prior to June 2, 1924, the effective date of the statute presently involved. All of said trusts will be affected by the decision in the present case and the correct administration of said trusts will be in doubt until the case is finally decided. Also, numerous taxpayers have filed with the Treasury Department claims for the refund of taxes paid pursuant to the statutory provisions in question. Many other taxpayers have filed petitions with the United States Board of Tax Appeals for review of the action of the Treasury Department in assessing them under this statute. Suits similar to the present action have been instituted in other courts and

the United States District Court for the Western District of Pennsylvania in the case of *Clapp* v. *Heiner* (not yet reported) has decided one of such cases by following the decision of District Judge Mack in the instant case. The termination of all of these various proceedings is awaiting the final outcome of the present case.

The importance of the case is so readily apparent that elaboration on the point would seem unnecessary.

Point II.

The Circuit Court of Appeals and the District Court erred in holding that subdivisions (g) and (h) of Section 219 of the Revenue Act of 1924 were constitutional.

A revocable trust vests the legal title to the *corpus* of the trust in the trustee and, until the exercise of the power of revocation reserved by the grantor, the transfer, so far as the material here, is as complete and effective when made as though the trust had been irrevocable.

Jones v. *Clifton*, 101 U. S. 225;
The Farmers' Loan and Trust Company v. *Bowers*, 29 Fed. (2nd) 14;
Van Cott v. *Prentice*, 104 N. Y. 45, 10 N. E. 257;
Nichols v. *Emery*, 109 Cal. 323, 41 Pac. 1089;
Dickerson's Appeal, 115 Pa. 198, 8 Atl. 64.

Therefore the effect of the statute, baldly stated, is to tax A upon the income of B. Such procedure is arbitrary and capricious in the extreme.

Clearly, Congress does not have power to tax the income from an irrevocable trust to the donor, and the power of revocation is not material here. The taxing statute is concerned with income, not with principal. Regardless of the existence of a power of revocation, the income once accrued is completely and irrevocably the beneficiary's income, in which the donor has no interest and over which he has no control. Therefore, since the tax is a direct tax on income, by the same token that the income from an irrevocable trust must be taxed to the beneficiary, the income from a revocable trust must be likewise so taxed.

Congress cannot by any definition declare that to be income which is not income. *Eisner* v. *Macomber*, 252 U. S. 189. Therefore, Congress cannot by mere edict declare to be the income of A the income from securities the legal title to which was not vested in A, and when in fact another person was entitled to and actually received such income. Such action on the part of Congress as to petitioner is an act of confiscation in direct violation of the Fifth Amendment to the Constitution.

The taxation of the petitioner upon the income of the trust beneficiary cannot be justified as necessary to the enforcement of an admitted constitutional power. The income from a revocable trust can be taxed to the beneficiary who receives the same. *Irwin* v. *Gavit*, 268 U. S. 161. The income from a revocable trust being thus taxable, there is no necessity for invoking any ancillary constitutional power that Congress may have. The mere desire of Congress to con-

centrate incomes in such a manner as to yield a mexi-mum *rate of tax* does not create a necessity justifying the disregard of accepted principles of constitutional and trust law.

POINT III.

The Circuit Court of Appeals and the District Court erred in holding that the statutory provisions in question were constitutional as applied to the income of a revocable trust created prior to June 2nd, 1924, the effective date of the Revenue Act of 1924.

Nichols v. *Coolidge*, 274 U. S. 531;
Brushaber v. Union Pacific Railroad Co., 240 U. S. 1;
The Farmers' Loan and Trust Company v. Bowers, supra;
Barclay v. *Edwards & Co.*, 267 U. S. 442, 450.

Conclusion.

A Writ of Certiorari should be granted in order that petitioner may have the judgment of this Court upon the important questions involved herein.

Respectfully submitted,

JOSEPH M. HARTFIELD,
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A. C. NEWLIN,
Of Counsel.